COURT DECISIONS PERTAINING TO PUBLIC HEALTH.

A DIGEST OF THE JUDICIAL OPINIONS PUBLISHED IN THE PUBLIC HEALTH REPORTS BEFORE JANUARY 1, 1916.

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The following digest includes the judicial opinions which were published in the Public Health Reports between May 30, 1913, when the first opinion was published, and December 31, 1915. Since July 1, 1914, current digests of the reports of the Federal and higher State courts have been carefully examined in the endeavor to secure reports of all judicial cases relating directly to the public health. Opinions relating to house plumbing, noises, and offensive odors have not been included. While nearly everything which affects mankind has or may have some relation to the health of individuals, it is believed that no subject has been omitted which is sufficiently important from a public health standpoint to justify its inclusion.

Health Authorities.

Contract of a board of health with one of its members.—Members of boards of health occupy positions of trust, and the Supreme Court of Maine holds that they should not place themselves in situations where their personal interests may conflict with their duties to the communities for which they act. Under the decision referred to, a contract for services made by a board of health with one member of the board is void, even when the contract is reasonable and made in good faith; but it may be possible for a member of a board who has rendered services to recover what the services are reasonably worth, even though his contract with the board is not recognized by the court. (Lesieur *v.* Rumford, P. H. R., Oct. 1, 1915, p. 2967.)

Removal of members of board of health.—The charter of the city of New Rochelle, N. Y., provided that the mayor might remove appointive officers after service of written charges, hearing, and the taking of testimony under oath. The Supreme Court of New York decided that members of the city board of health, before removal, were entitled to written charges specifically alleging substantial cause for removal, reasonable notice of the hearing, permission to cross-examine witnesses, an opportunity to be heard and to produce witnesses in defense, and a just judgment. If these were denied them and they were arbitrarily removed, they had a right to appeal to the courts. (Loevin *v.* Griffing, P. H. R., Aug. 27, 1915, p. 2589.)

Selection of health officer by lot.—A city board of health was equally divided in choosing a health officer. They decided the matter by drawing lots, but the successful candidate was never formally elected. The Wisconsin Supreme Court decided that the selection by lot conferred no right to the office. (Meany *v.* Staehle, P. H. R., Sept. 17, 1915, p. 2829.)

Power of State board of health to suppress epidemics.—Under the laws of Nebraska, if a county board of health refuses to take measures to suppress an epidemic, the State board of health has power to employ a physician to do what is necessary to check the disease, and such physician can recover from the county reasonable compensation for his services, even though he is a member of the county board of health. (Shidler *v.* York County, P. H. R., Aug. 14, 1914, p. 2151.)

Compensation of members of board of health.—A member of a county board of health is entitled to compensation for unusual services rendered in suppressing epidemics even though under ordinary circumstances the members of the board serve without compensation. (Plumb *v.* York County [Nebr.], Shidler *v.* York County [Nebr.], P. H. R., Aug. 14, 1914, pp. 2151, 2153.)

Compensation of county physician.—A county physician who receives $5 per month for certain services regularly rendered is entitled to additional compensation for unusual services performed by direction of the chairman of the county board of health in suppressing an epidemic of smallpox. (Plumb *v.* York County [Nebr.], P. H. R., Aug. 14, 1914, p. 2153.)

Suits against municipal authorities.—In Arkansas suits at law for tort can not be brought against municipal corporations, because they are agents of the State for governmental purposes; but in a proper case they may be enjoined from creating a nuisance or be required to abate one already created by them. (Jones *v.* Sewer District, P. H. R., Oct. 22, 1915, p. 3177.)

Liability for negligence of employees.—The Court of Appeals of the District of Columbia decided that a municipal corporation is not liable for damage caused by the negligence of employees of the health department in the performance of their duties. The reason for this rule is that those duties are of a public or governmental character for the general public welfare. (Coates *v.* D. C., P. H. R., May 1, 1914, p. 1111.)

Municipality not liable for wrongful acts of its employees.—A city is not liable for the wrongful acts of its servants or their negligence in operating a septic tank; but it is liable for damage resulting from the improper construction of the apparatus which the servants are using. (El Dorado *v.* Scruggs [Ark.], P. H. R., Nov. 19, 1915, p. 3439.)

Proof of the population of a city.—The fact that a city has more than a certain number of inhabitants can be shown in court, for the purpose of determining the jurisdiction of a board of health, only by an official census. (McLaughlin *v.* Bunzel [Mass.], P. H. R., July 2, 1915, p. 2032.)

Creation of boards of health.—The protection and preservation of the public health is one of the primary fields for the exercise of the

police power of the State. Under this power the legislature may create boards of health and bestow upon them necessary powers to promote the general health of the people. (Welch *v.* Coglan [Md.], P. H. R., Oct. 29, 1915, p. 3241; Hawkins *v.* Hoye [Miss.], P. H. R., Apr. 9, 1915, p. 1111; Koy *v.* Chicago [Ill.], May 15, 1914, p. 1267; People *v.* Tate [Ill.], Apr. 17, 1914, p. 973.)

Delegation of legislative power.—Statutes conferring upon boards of health the power to adopt ordinances, rules, and regulations necessary to advance the public health are not unconstitutional as being a delegation of legislative power which the constitution gives to the legislature only. (Hawkins *v.* Hoye [Miss.], P. H. R., Apr. 9, 1915, p. 1111; People *v.* Tate [Ill.], Apr. 17, 1914, p. 973.)

Inconvenience to individuals.—Individual convenience and profit must be enjoyed in proper subjection to and observation of the laws affecting the public health, which is at the foundation of the public good. (State *v.* Starkey [Me.], P. H. R., Aug. 14, 1914, p. 2149; Kuhlman *v.* Rucker [U. S. Dist. Ct.], P. H. R., Apr. 2, 1915, p. 1033.)

Powers of municipal boards derived from State.—A political corporation, such as a municipal board of health, "has and in the nature of things can have only such powers as are delegated to it by the legislature, either expressly or by necessary implication." (New Orleans *v.* Stein [La.], P. H. R., Oct. 29, 1915, p. 3259.)

State may delegate power to require local improvements for the protection of health.—It is in the power of the State to require local improvements to be made which are essential to the health and prosperity of any community within its borders. Such authority may be lodged in any board or tribunal which the legislature may designate, and it is for the legislature to prescribe the way in which the means to meet the cost of the work shall be raised. (Welch *v.* Coglan [Md.], P. H. R., Oct. 29, 1915, p. 3241.)

Laws, Regulations, and Ordinances.

Power of municipality to enact ordinances.—A municipality through its health officers and other proper agents may enact measures for the safety and to preserve the health of its inhabitants. (Kuhlman *v.* Rucker [U. S. Dist. Ct.], P. H. R., Apr. 2, 1915, p. 1033.)

Reasonable regulations are constitutional.—It is only where the power to regulate has been clearly abused that the courts will declare the manner of its exercise to be in violation of constitutional rights. (Koeffler *v.* State [Wis.], P. H. R., Sept. 18, 1914, p. 2455; State *v.* Starkey [Me.], P. H. R., Aug. 14, 1914, p. 2149.)

Regulations liberally construed.—The Kentucky Court of Appeals decided that the powers of local boards of health, conferred by the State legislature for the protection of the public health, should be liberally construed in order to effectuate the purpose of the legisla-

ture. (Covington Board of Health *v.* Kollman, P. H. R., Mar. 13, 1914, p. 653.)

Orders of State board of health must be reasonable.—Orders issued by a State board of health, under authority of a general statutory authorization, must be reasonable, and if it can be shown that they are not reasonable, they will be declared invalid by the courts. (Welch *v.* Coglan [Md.], P. H. R., Oct. 29, 1915, p. 3241.)

Power to adopt ordinances on the same subject granted to two different bodies.—Different provisions of a statute granted authority to the city board of health and to the city council to enact ordinances covering the same subject matter. The court held that an ordinance adopted by the board of health was not invalid because of the conflict of authority, the city council not having adopted any conflicting ordinance. (New Orleans *v.* Sanford [La.], P. H. R., Oct. 29, 1915, p. 3248.)

Requirements to make regulations effective.—Rules and regulations of boards of health must be in writing, adopted in an official manner, and duly entered of record. (People *v.* Tait [Ill.], P. H. R., Apr. 17, 1914, p. 973.)

Public sentiment considered in determining reasonableness of regulations.—Police regulations to be valid must be reasonable, necessary, and not unduly oppressive. The lawmaking power, in their enactment, takes into consideration the public sentiment of the community as a measure of the degree of regulation to which private property shall be subjected for the public good, and nowhere do the courts so completely reflect the state of public opinion as in deciding cases involving the exercise of the police power. (Dade *v.* U. S. [D. C.], P. H. R., May 30, 1913, p. 1099.)

Part of law valid and part invalid.—One provision of a law, which would be valid if standing alone, should not be held to be void because some other provision of the same law dealing with a different subject may be invalid. (Koeffler *v.* State [Wis.], P. H. R., Sept. 18, 1914, p. 2455; Welch *v.* Coglan [Md.], P. H. R., Oct. 29, 1915, p. 3241.)

Penalties—How fixed.—Where a State law fixes the penalty for violation of a regulation of a municipal board of health, the board has no authority to provide a different penalty. (New Orleans *v.* Stein [La.], P. H. R., Oct. 29, 1915, p. 3259.)

Morbidity Reports.[1]

Evidence.—A Vermont physician was charged with failure to report a case of diphtheria. His defense was that he did not recognize the disease. The Supreme Court of Vermont decided that it was proper to introduce evidence showing that the physician had knowledge of

[1] Reprint No. 205 from the Public Health Reports is a digest of court decisions relating to morbidity reports. It includes the cases in the Federal and higher State courts previous to 1914.

facts which indicated that diphtheria was present in the community, for the purpose of proving that he knew, or should have known, that his patient had diphtheria. (State *v.* Pierce, P. H. R., Mar. 13, 1914, p. 651.)

Vaccination.

Vaccination required as a condition of admission to a university.—The Court of Appeal for the First District of California decided that the board of regents of the University of California had the right to make and enforce reasonable rules requiring vaccination as a condition of admission to the university. In the opinion of the court, Mr. Justice Richards made the following statements: "There are certain subjects affecting the general welfare over which the legislature has been wisely invested with ultimate control. These subjects are those embraced within the general police powers of the State, and among them is the subject of the general health. * * * It [the legislature] has power to pass general laws, in the nature of health regulations, upon the subject of vaccination, prescribing the extent to which persons seeking entrance as students in educational institutions within the State must submit to its requirements as a condition of their admission. * * * The State of California stands committed to the policy of requiring vaccination as the best preventive means known to medical science for lessening the liability to infection with a dreaded and dangerous disease." (Williams *v.* Wheeler, P. H. R., June 5, 1914, p. 1471.)

Rabies—Prevention of.

Muzzling of dogs.—The Supreme Court of New York upheld a regulation of the New York City board of health requiring that dogs must be muzzled when in public places in the city. The court said: "The possession of dogs in the city is subject to the limitation that such possession must not interfere with the security, health, and comfort of the other inhabitants of the city, and the ordinances made by the proper municipal authorities for the protection of health or comfort must be accepted as limitations upon the privilege of such possession." (Knoblauch *v.* Warden of City Prison, P. H. R., Oct. 1, 1915, p. 2970.)

Quarantine.

Requirements to make quarantine regulations effective.—Under the laws of the State of Illinois, rules or regulations establishing quarantine, to be enforceable in court, must be in writing, adopted in an official manner, and duly entered of record. (People *v.* Tait, P. H. R., Apr. 17, 1914, p 973.)

Order authorized by telephone.—Under the law of North Dakota, quarantine authorized by the members of a township board of

health by conversation over the telephone, without a regular meeting of the board, is valid, though the law requires three days' notice of meetings of the board. (Plymouth *v.* Klug, P. H. R., May 1, 1914, p. 1112.)

Expenses of quarantined household—How borne.—The Supreme Court of North Dakota decided that a person who has been quarantined, if financially responsible, may be required to reimburse the township for expense incurred in transporting supplies to him while his house was under quarantine. (Plymouth *v.* Klug, P. H. R., May 1, 1914, p. 1112.)

Plague Prevention—Rat Proofing of Buildings.

Rat proofing ordinances.—In view of the danger to the community from plague and the migratory habits of rats, it is reasonable to make rat-proofing ordinances apply throughout a city instead of restricting their operation to limited areas around known foci of infection. (Kuhlman *v.* Rucker [U. S. Dist. Ct.], P. H. R., Apr. 2, 1915, p. 1033.)

Regulation valid, though it could not cover all buildings.—An ordinance requiring the rat proofing of all buildings in a city was not invalid because it could be enforced only against privately owned buildings and the public buildings were not rat proofed. The board of health in passing the regulation was justified in doing the best it could and going as far as the circumstances allowed it to go. (New Orleans *v.* Sanford [La.], P. H. R., Oct. 29, 1915, p. 3248.)

Time for compliance with ordinances.—An ordinance requiring the rat proofing of all buildings in a city must allow property owners time to comply with its provisions before they become subject to penalties for violation of the ordinance. (New Orleans *v.* Sanford [La.], P. H. R., Oct. 29, 1915, p. 3248.)

Discretion of health officer.—A rat-proofing ordinance which provides different methods of rat proofing different classes of buildings, but allows the health officer to permit the use of methods required in buildings of one class to be used in rat-proofing buildings of another class, is null, as "the effect of this discretion is to leave it optional with the health officer whether the ordinance shall be enforced or not according to its terms." (New Orleans *v.* Sanford [La.], P. H. R., Oct. 29, 1915, p. 3248.)

Physical Examination of School Children.

The Supreme Court of South Dakota decided that a school board has the power to require a report by a physician showing the physical condition of a child as a prerequisite to the admission of the child to school. The board of education of the city of Aberdeen, S. Dak.,

adopted a resolution requiring a report by a physician showing certain data regarding the physical condition of a child before that child could be admitted to the school. The necessary examination might be made by the school physician or by a physician employed by the parents. A parent refused to permit his child to undergo the examination, and claimed the right to have his child educated in the public schools although no physician's report had been made. The court held that the resolution was reasonable and that it was within the power of the school board. (Streich *v.* Board of Education of Aberdeen, P. H. R., Nov. 12, 1915, p. 3361.)

Marriage of Diseased Persons.

Certificate of health required before marriage.—The Wisconsin Supreme Court decided that the so-called "Wisconsin eugenics law" was valid. This law requires all male applicants for a marriage license to file a physician's certificate showing that they are free from venereal diseases "so nearly as can be determined by physical examination and by the application of recognized clinical and laboratory tests." In the opinion Chief Justice Winslow stated the following legal principles: "The power of the State to control and regulate by reasonable laws the marriage relation, and to prevent the contracting of marriage by persons afflicted with loathsome or hereditary diseases, which are liable either to be transmitted to the spouse or inherited by the offspring, or both, must on principle be regarded as undeniable. * * * When the legislature passes a constitutional law, that law establishes public policy upon the subjects covered by it, and that policy is not open to question by the courts." The court also decided that the fact that the law required a certificate from males and made no such requirement as to females did not make it unreasonably discriminatory or unconstitutional; and that it was not necessary for physicians to make the Wassermann test before issuing the required certificate. (Peterson *v.* Widule, P. H. R., Sept. 11, 1914, p. 2391.)

Venereal disease as ground for annulment of marriage.—The Wisconsin Supreme Court also held that gonorrheal infection of one party at the time of the marriage justified the court in annulling the marriage. (C. *v.* C., P. H. R., Dec. 31, 1915, p. 3847.)

Tuberculosis as ground for annulment of marriage.—The Supreme Court of New York annulled a marriage because one party concealed from the other the fact that he was suffering from tuberculosis at the time of the marriage. The court said: "There can be no doubt that tuberculosis is a disease of an infectious character, and that close association with a person afflicted with that disease, unless attended by great care, occasions danger of infection to those coming into close contact with such person. While it may be that such care is

possible in the marital relation, nevertheless I do not think it should be the policy of the courts to sustain the obligations of a union which would entail the burden and danger that would follow under the circumstances." (Sobol *v.* Sobol, P. H. R., Oct. 22, 1915, p. 3175.)

Occupational Diseases and Workmen's Compensation Laws.

The Massachusetts law.—Under the Massachusetts workmen's compensation law, employees coming within the terms of the law are entitled to compensation for any disease or injury which arises out of and in the course of the employment which causes incapacity for work and thereby impairs the ability of the employee for earning wages. (Johnson *v.* London Co., P. H. R., July 3, 1914, p. 1781.)

The Supreme Judicial Court of Massachusetts has decided that the following causes of disability were included within the term "personal injury" as used in the Massachusetts law: Lead poisoning (Johnson *v.* London Co., P. H. R., July 3, 1914, p. 1781); blindness resulting from an acute attack of optic neuritis induced by poisonous gases (In re Hurle, P. H. R., June 12, 1914, p. 1583); heavy lifting by an employee whose heart was weak (In re Fisher, P. H. R., July 2, 1915, p. 2033); suicide resulting from insanity caused by injury (In re Sponatski, P. H. R., July 9, 1915, p. 2087); heart disease, which was aggravated by excitement and exertions in an emergency (In re Brightman, P. H. R., May 14, 1915, p. 1455.)

The Michigan law.—The Supreme Court of Michigan decided that it was not the intention of the Michigan Legislature in passing the Michigan workmen's compensation law to provide compensation for industrial or occupational diseases, but for injuries arising from accidents alone. Injury from lead poisoning was held not to be included within the terms of the law. (Adams *v.* Acme Co., P. H. R., Nov. 6, 1914, p. 2999.)

Milk.

Right to regulate sale of.—Milk is so generally used and the effect of its impurity or unwholesomeness is so serious that the regulation of its sale is an imperative duty which has been universally recognized. This regulation in minute detail is essential, and extends from the health and keeping of the cows which produce the milk through all the processes of transportation, preservation, and delivery to the consumer. (Koy *v.* Chicago [Ill.], P. H. R., May 15, 1914, p. 1267.)

Pasteurization—Recording apparatus required on pasteurizer.—An ordinance of the city of Chicago required that a recording apparatus be used on pasteurizers which would show the temperature and the time of exposure to that temperature. The Supreme Court of Illinois held that the ordinance was valid. (Koy *v.* Chicago, P. H. R., May 15, 1914, p. 1267.)

Tuberculin test required.—The Supreme Court of Mississippi upheld a regulation of the State board of health which required that all

cows used by dairymen selling milk should be tuberculin tested semi-annually by a competent veterinarian. The court said that the purpose of the regulation was to prevent disease among human beings, and that therefore the regulation was properly made and enforced by the State board of health rather than by the State live stock commission. (Hawkins *v.* Hoye, P. H. R., Apr. 9, 1915, p. 1111.)

Tuberculin test required.—The Supreme Court of the United States upheld an ordinance of the city of Milwaukee, Wis., relative to milk produced outside the city for sale within the city. The ordinance required that each person bringing or shipping milk into the city for sale should file with the city health department a certificate showing that the milk was drawn from tuberculin-tested cows. It also provided that if the provisions of the ordinance were not complied with the milk should be confiscated and destroyed. (Adams *v.* Milwaukee, P. H. R., May 30, 1913, p. 1102.)

Sale in glass bottles required.—The board of health of the city of Covington, Ky., adopted a regulation requiring that milk sold in quantities less than 1 gallon must be delivered in transparent glass bottles. The Kentucky Court of Appeals decided that this regulation was valid. (Covington Board of Health *v.* Kollman, P. H. R., Mar. 13, 1914, p. 653.)

Federal pure-food law applies to milk.—Milk which was filthy and decomposed, containing colon bacilli and streptococci in large numbers, was held by the Court of Appeals of the District of Columbia to be adulterated within the meaning of that term as used in the Federal pure food and drugs law. (Dade *v.* U. S., P. H. R., May 30, 1913, p. 1099.)

Standards for milk prescribed by State board of health.—The regulations of the Kansas State Board of Health prescribing standards for milk were upheld by the State Supreme Court. (State *v.* Meyer, P. H. R., Aug. 6, 1915, p. 2323.)

Adulteration.—The Supreme Court of New York and the Supreme Judicial Court of Massachusetts rendered decisions construing the State statutes prohibiting the adulteration of milk. (People *v.* Martin [N. Y.], P. H. R., Sept. 10, 1915, p. 2771; Commonwealth *v.* Elm Farm Milk Co. [Mass.], P. H. R., Sept. 24, 1915, p. 2908.)

Foodstuffs.

Sherley amendment to the Federal pure food and drugs law.—The Supreme Court of the United States decided that Congress in passing the Sherley amendment to the United States pure food and drugs law intended to prevent injury to the public health by the sale and transportation in interstate commerce of foodstuffs containing deleterious substances, and that it was necessary to prove, in order to secure a verdict of condemnation under this part of the statute,

that the added poisonous or deleterious substances are such as may render the foodstuff injurious to health. (U. S. *v.* Lexington Co., P. H. R., Mar. 13, 1914, p. 656. See also Dade *v.* U. S. [D. C.], P. H. R., May 30, 1913, p. 1099.)

Poisonous foreign substance in foodstuff—Manufacturer liable.—The Supreme Court of Tennessee decided that a manufacturer of foodstuffs which are placed on sale in sealed packages must exercise care to see that nothing unwholesome or injurious is contained in the packages, and he is liable to the consumer for injury resulting from negligence in filling a package even when the consumer purchases the package from a dealer and not directly from the manufacturer. (Boyd *v.* Coca-Cola Bottling Works, P. H. R., Oct. 15, 1915, p. 3095.)

Cold storage of food.—The New York law limiting the time during which foodstuffs can be retained in cold storage was held to be valid. (People *v.* Finkelstein, P. H. R., Oct. 8, 1915, p. 3042.)

Inspection of meat.—The courts of New Jersey and Maine rendered decisions upholding the right of a city to require that meat sold in the city should be inspected at the place where the slaughtering is done even if this place is outside of the city. (Feld *v.* Passaic [N. J.], P. H. R., Sept. 18, 1914, p. 2456; State *v.* Starkey [Me]., P. H. R., Aug. 14, 1914, p. 2149.)

The Supreme Court of Indiana affirmed a conviction under a State law for manufacturing foodstuffs from unwholesome meat. (Gardner *v.* State, P. H. R., July 2, 1915, p. 2031.)

Habit-Forming Drugs.

Power of the legislature.—In the exercise of the police power it is competent for the legislature to strictly regulate the sale and distribution of any drug of a poisonous nature the use of which tends to debauch the public in the formation of a habit which undermines the physical, mental, and moral constitution of its users. (Hyde *v.* State [Tenn.], P. H. R., Sept. 24, 1915, p. 2903.)

The Supreme Court of Tennessee decided that the antinarcotic law of that State was constitutional. The law prohibited the sale of certain poisons except on the prescription of a practicing physician and required that a physician who prescribes habit-forming drugs must be in personal attendance upon the patient for whom they are intended. (Ibid.)

Securing of evidence—Detectives.—The same court decided that the fact that a prescription was secured by a detective for the purpose of securing evidence did not constitute a valid defense. (Ibid.)

Kentucky law.—The Kentucky Court of Appeals decided that the Kentucky law of 1912 was valid. The law prohibited the sale of opium or its alkaloidal salts or their derivatives for any purpose other than for "legitimate use." (Commonwealth *v.* Gabhart, P. H. R., Jan. 1, 1915, p. 53.)

New Jersey law.—The Supreme Court of New Jersey decided that the antinarcotic law of that State was penal in its objects and could not be enlarged in its scope by judicial construction; and it was held that the statute did not include heroin among the drugs the sale of which was regulated. (State *v.* Norwood, P. H. R., Aug. 20, 1915, p. 2511.)

Evidence to prove nature of drug.—In Georgia it was decided that a chemical analysis was not necessary to prove that a drug which was sold was cocaine, but that this might be proved by the testimony of addicts who were familiar with the drug and its effects. The Colorado Supreme Court reversed a conviction for selling cocaine on the ground that the testimony in the case was not sufficient to show the nature of the drug. (Butler *v.* State [Ga.], P. H. R., Aug. 14, 1914, p. 2154; Stadler *v.* People [Colo.], P. H. R., Aug. 20, 1915, p. 2512.)

Federal opium laws.—A person who receives smoking opium in the United States must bear in mind the statutes regulating its importation and possession, must ascertain its history, and be prepared to show if necessary that it was not unlawfully imported. (U. S. *v.* Yee Fing, P. H. R., Sept. 24, 1915, p. 2907.)

In a prosecution for unlawfully manufacturing smoking opium, it is proper to introduce evidence showing that the defendant is an opium smoker in order to show that he is under a temptation to supply himself with smoking opium. (Tam Shi Yan *v.* U. S., P. H. R., Dec. 31, 1915, p. 3848.)

THE FEDERAL ANTINARCOTIC LAW.

Meaning of section 8.—Section 8 of the Harrison antinarcotic law provides that "it shall be unlawful for any person not registered under the provisions of this act, and who has not paid the special tax provided for by this act, to have in his possession or under his control any of the aforesaid drugs; and such possession or control shall be presumptive evidence of a violation of this section and also of a violation of the provisions of section 1 of this act." (38 Stat. L., 785; P. H. R., Feb. 19, 1915, p. 573.)

Judge Neterer, of the United States Court for the Western District of Washington, said that the purpose of Congress in enacting the law was to "prohibit the importation, manufacture, or sale of the drugs described; and by this act the drug became an 'outlaw' in the country; its presence Congress has the right to trace, and has the power to punish any person in whose possession this 'outlawed' article may be found." [1] (U. S. *v.* Brown, P. H. R., Dec. 10, 1915, p. 3631.)

[1] The United States Supreme Court decided that the law in question is primarily a revenue measure, and practically overruled the decision of Judge Neterer. (See Public Health Reports, June 16, 1916, p. 1561, United States *v.* Jin Fuey Moy.)

On the other hand, Judge Bourquin, of the United States District Court for Montana, decided that section 8 does not purport to do more than "make unlawful mere possession of the drugs by any person of the classes by section 1 required to register and pay and who have not, and to create a statutory rule of evidence." (U. S. *v.* Woods, P. H. R., Dec. 17, 1915, p. 3715.)

Judge Neterer held that an indictment which charged that the defendant had in his possession and under his control a preparation of opium and that he had not registered and paid the special tax stated facts sufficient to constitute an offense under the statute; but Judge Bourquin decided that a similar indictment was insufficient, in that it did not allege that the defendant belonged to any of the classes of persons required to register and pay the special tax.[1]

Physicians' prescriptions—Amount of drug prescribed.—The United States Court for the Western District of Tennessee decided that the law does not limit the amount of habit-forming drugs that a physician may prescribe. (U. S. *v.* Friedman, P. H. R., Dec. 24, 1915, p. 3777.)

Drugs and Poisons.

The Sherley amendment—False statements regarding the curative properties of "patent medicines."—The Sherley amendment to the Federal pure food and drugs law makes it unlawful to ship in interstate commerce any drug "if its package or label shall bear or contain any statement, design, or device regarding the curative or therapeutic effect of such article * * * which is false and fraudulent."

The United States District Court for the Eastern District of Pennsylvania decided that this amendment was constitutional and valid. (U. S. *v.* American Laboratories, P. H. R., Oct. 8, 1915, p. 3037.)

It was also decided that when there is doubt as to whether statements regarding the curative properties of "patent medicines" are fraudulent or are honest expressions of opinion the question should be decided by the jury.

The court said that "such laws should be administered in such a way as that honest and well-intentioned business may not be hampered, but the detection of frauds and cheats will be made sure, and their conviction and punishment rendered certain." (Ibid., p. 3041.)

Misbranding "patent medicines."—Under the United States pure food and drugs law, a patent medicine is misbranded if the statement regarding the drug, even though not "flatly and boldly false" is such as to create a false impression in the mind of the reader as to the "ingredients or the composition of the drug." (Ibid., p. 3040.)

[1] Later cases discussing this question appear in the Public Health Reports, Jan. 21, 1916, pp. 141 and 143. The United States Supreme Court, on June 5, 1916, decided that such an indictment was not sufficient. (U. S. *v.* Jin Fuey Moy, P. H. R., June 16, 1916, p. 1561.)

Registration of pharmacists.—The New York law requiring pharmacists to register annually was held to be valid. (People *v.* Roemer, P. H. R., Oct. 15, 1915, p. 3097.)

Sale of poisons by persons not druggists.—The California law which regulated the sale of certain poisons was construed. (Ex parte Potter, P. H. R., June 18, 1915, p. 1851.)

Water for Domestic Use.

Water is a necessity of life, and one who undertakes to trade in it and supply customers is bound to use reasonable care that it shall be ordinarily and reasonably pure and wholesome. (Jones *v.* Mt. Holly Water Co. [N. J.], P. H. R., Sept. 3, 1915, p. 2669.)

Damages for illness caused by impure water.—The Supreme Court of New Jersey decided that a water company which supplied polluted water was liable to a customer for damages resulting from illness caused by the pollution of the water. The circumstances were such that the water company should have known that the water was unsafe. (Ibid.)

The water company objected to the verdict on the ground that there was no proof that the water contained typhoid bacilli, but the court held that the jury was justified in finding that the typhoid fever was contracted as a result of drinking the water, there being evidence that for a long time large quantities of fecal and vegetable matter had been discharged into the sources of supply of the water. (Ibid.)

Sewage—Disposal of.

Importance of sewerage.—In a thickly populated community nothing is more vital to the preservation of the public health than the establishment of proper and suitable drainage and sewerage. (Welch *v.* Coglan [Md.], P. H. R., Oct. 29, 1915, p. 3241.)

The proper disposal of sewage is of vital importance to cities and towns; and where sewage can be purified and discharged practically free from odor and without seriously contaminating streams, the mere fact that a septic tank near residences would produce mental annoyance or would lessen the value of property ought not to prevent the establishment and operation of such a tank. (Cardwell *v.* Austin [Tex.], P. H. R., Dec. 3, 1915, p. 3575.)

Orders of a board of health must be reasonable.—An order of a State board of health, under authority of a general statute, which order requires a county to install a sewer system covering a specified area, must be reasonable and necessary, and if it can be shown that such order is unreasonable it will be held invalid by the courts. (Welch *v.* Coglan [Md.], P. H. R., Oct. 29, 1915, p. 3241.)

Septic tank not a nuisance if properly planned.—Suit was brought to prevent the erection of a septic tank near the residence of the plaintiff.

The court held that the plans for the proposed tank were defective and that it would be a nuisance. For this reason an injunction was issued prohibiting the erection of the tank as proposed; but the court declined to prohibit the construction of a tank on the proposed location if of proper size and correctly planned, as such a tank would not be a menace to health nor a nuisance. (Cardwell *v.* Austin [Tex.], P. H. R., Dec. 3, 1915, p. 3575.)

In the construction of a septic tank for the purifying of sewage a city must exercise care to build it of such dimensions and character as to prevent the escape of gases and foul odors therefrom in such volume as to create a nuisance to any citizen. (Cardwell *v.* Austin [Tex.], P. H. R., Dec. 3, 1915, p. 3575.)

POLLUTION OF STREAMS BY SEWAGE.

Liability of municipality for pollution of stream.—The pollution of a stream by making it the outlet for a sewage-disposal system constitutes a damage to the land through which it flows for which compensation must be given by a municipality which causes the pollution. (El Dorado *v.* Scruggs [Ark.], P. H. R., Nov. 19, 1915, p. 3439; Kraver *v.* Smith [Ky.], P. H. R., Nov. 5, 1915, p. 3303.)

Right of landowner adjacent to stream.—The owner of land along a natural watercourse is entitled to the natural flow of the water unimpaired in quality except such impairment as may be occasioned by reasonable use of the stream by others. (Kraver *v.* Smith [Ky.], P. H. R., Nov. 5, 1915, p. 3303.)

Injunction against city officers.—The supreme court of Arkansas decided that it is the duty of the commissioners of a sewer district to so construct a sewage-disposal plant that it will not become a nuisance to any neighborhood or to any inhabitant thereof, and city officers will be enjoined from constructing or maintaining a sewage-disposal plant in such manner as to create a nuisance. (Jones *v.* Sewer District, P. H. R., Oct. 22, 1915, p. 3177.)

Long-continued usage does not give right.—The fact that sewage has been discharged into a certain stream for a long time does not justify continuance of the practice when a nuisance is created. (Kraver *v.* Smith [Ky.], P. H. R., Nov. 5, 1915, p. 3303.)

Measure of damages.—The measure of damages to the owner of the land which is injured by pollution of a stream is the difference in its value before and after the sewage was discharged into the stream. (El Dorado *v.* Scruggs [Ark.], P. H. R., Nov. 19, 1915, p. 3439.)

Injury to business distinguished from injury to land.—A dairy business was injured because the customers believed that the milk was impure by reason of the cows drinking from a stream into which a septic tank emptied. The court held that injury to the dairy

business could not be included as one of the elements in determining the amount of damage to his land. (Ibid.)

A municipality is liable for damages caused by improper construction of a sewage-disposal plant.—A city is liable for injury caused by the construction and proper operation of a sewage-disposal plant, including necessary flushing of the septic tank; but the city is not liable for injury caused by the wrongful act of its servants in unnecessarily flushing a septic tank. (Ibid.)

A municipality can control the use of its sewers.—A city has the power to control and regulate its drains and sewers, and a property owner has no right to connect a private sewer with the city sewer without the consent of the municipality. (Kraver *v.* Smith [Ky.], P. H. R., Nov. 5, 1915, p. 3303.)

A municipality is liable for the acts of individuals which it permits.—A city has authority to regulate the character of the sewage which any property owner may discharge into the city sewer, but where a property owner is allowed to make connection with a city sewer and no attempt is made to regulate the character of matter discharged into the sewers, the city is liable for damages caused by the discharge of matter from the city sewers into a stream, creating a nuisance. (Ibid.)

Garbage—Disposal of.

Garbage-reduction plant not a nuisance.—A garbage-reduction plant erected under a contract made by a municipality, the contract being authorized by a statute and the plant operated under municipal supervision and in a proper manner, is not a public nuisance, and the company erecting such a plant can not be prosecuted criminally. (Toledo Disposal Co. *v.* State [Ohio], P. H. R., Nov. 26, 1915, p. 3507.)

Owners of apartment houses required to furnish garbage cans.—A Wisconsin law which required owners of apartment houses, tenement houses, and lodging or boarding houses to provide suitable receptacles for garbage was held to be valid. (Koeffler *v.* State, P. H. R., Sept. 18, 1914, p. 2455.)

ARTIFICIAL PURIFICATION OF OYSTERS.

A REPORT OF EXPERIMENTS UPON THE PURIFICATION OF POLLUTED OYSTERS BY PLACING THEM IN WATER TO WHICH CALCIUM HYPOCHLORITE HAS BEEN ADDED.

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It is generally known that the biological conditions most favorable for the cultivation of oysters are frequently intimately associated with natural agencies of pollution. Depending largely for their food upon substances washed down by rivers, shellfish grow best in bays and estuaries, and in many cases these waters receive the sewage of cities. While it may often be possible to remove the main sources of pollu-